

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**LAWRENCE SHEINBERG and GILES HAZEL)**  
**on behalf of themselves and others similarly )**  
**situated )**  
**Plaintiffs, ) Civil Action No. 00-6041(JLL)**  
**)**  
**)**  
**v. )**  
**)**  
**ROBERT SORENSEN; LITETRONICS )**  
**INTERNATIONAL, INC., )**  
**Defendants. )**

## DEFENDANTS' MOTION FOR CLASS DECERTIFICATION

Defendants, Robert Sorenson and Litetronics International, Inc., by and through their undersigned counsel, hereby file their Motion for De-certification of the class, and in support of their Motion state as follows:

## ARGUMENT

If proof of the essential elements of the cause of action require individual treatment, then class certification is unsuitable. *In re Unisys Corp. Retiree Benefits Litig.*, 2003 U.S. Dist. LEXIS 1577 (E.D. Pa., 2003); *citing Newton v. Merrill Lynch, Pierce, Fenner & Smith*, 259 F.3d 154, 172 (3rd Cir. 2001). Where individual claims need to be examined to determine injury, individual issues overwhelm common class issues, and class certification is inappropriate. *Johnston v. HBO Film Management, Inc.*, 265 F.3d 178, 187 (3d Cir. 2001).

In this case, Plaintiffs' hearsay evidence, on its face, demonstrates that in order to ascertain damages, each class member would have to be examined because the proffered evidence of damages, apart from being inadmissible as hearsay, is so utterly lacking in other information that no trier of fact could determine their respective measure of

damages without individual inquiry. For example, as it relates to denied medical claims, each Plaintiff would have to show (1) that the medical claim was a covered claim under the Plan, (2) that he or she timely submitted the claim, and (3) that the claim was denied due to the alleged liability of Defendants. There is no possible manner in which the representative plaintiffs, Sheinberg and Hazel, who are Plaintiffs' sole disclosed witnesses, can establish the essential elements of the cause of action for each member of the class.

### CONCLUSION

For the foregoing reasons, Defendants Robert Sorensen and Litetronics International, Inc., respectfully request this Court to de-certify the class.

Respectfully submitted,

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